SUPREME COURT, U.S.

FILED

FEB 17 1976

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1169

JAMES C. GABRIEL, *Pro Se* a CLASS B STOCKHOLDER in MISSOURI PACIFIC RAILROAD COMPANY, for himself,

Petitioner Pro Se,

—v.—

BETTY LEVIN, on behalf of herself and all other holders of CLASS B COMMON STOCK of MISSOURI PACIFIC RAILROAD COMPANY, and on behalf of said corporation, and ROBERT LE VASSEUR and ALLEGHANY CORPORATION,

Plaintiffs-Appellees,

—against—

MISSISSIPPI RIVER CORPORATION, MISSOURI PACIFIC RAILROAD COMPANY, ROBERT H. CRAFT, T. C. DAVIS and THOMAS MILBANK,

Defendants-Appellees.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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TABLE OF CONTENTS

	PAGE
Opening Statement	1
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Rules Involved	11
Constitutional Provisions	11
Reasons for Granting the Writ	13
Another Reason for Granting the Petition	16
Conclusion	18
Certificate of Service	21
Appendix A—Judgment of the U. S. Court of Appeals	A1
Appendix B—Order of the U. S. District Court	A3

Table of Authorities

PAGE

Cases:

Jones Motor Alleghany Corporation Control and Purchase Johes Motor Co., Inc. #MC-F-10444) 16

Wood v. United States of America, 132 F. Supp. 586 (S.D.N.Y. 1955) 7, 12, 17

Statutes:

28 U.S.C. §1254(1) 2

Constitutional Provisions:

Fifth Amendment 7, 11

Article I

Section 9 ..... 6, 7, 15
Section 10 ..... 6, 7, 15

Rules:

Federal Rules of Civil Procedure

Rule 23 11
Rule 23(e) 18

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Opening Statement

Petitioner-Appellant James C. Gabriel, *pro se,* on behalf of himself alone, seeks a Writ of Certiorari to review a certain judgment of the United States Court of Appeals

for the Second Circuit, rendered and entered on the 18th of November 1975, affirming certain orders and judgments of the Federal District Court, S.D.N.Y. from which orders and judgment, petitioner had appealed.

Opinions Below

The judgment of the 2nd Circuit Court of Appeals appears on page A1, which Judgment as far as appellant knows, lacks an official reported citation.

The basic opinions of the District Court are as follows: (1) the opinion of March 19, 1973, reported 59 F.R.D. 353, whereby the Federal District Court approved and ordered a recapitalization of Missouri Pacific Railroad Company (MoPac); and (2) the opinion and judgment settling fees for the so called Class Action dated June 26, 1974 and reported as 377 F. Supp. 926.

The judgment of the Southern District Court denying petitioner's motion, dated March 19, 1975 and filed March 21, 1975, appears on page A3 of this petition.

Jurisdiction

This Court's jurisdiction is invoked under 28 U.S.C. §1254(1), the Judgment of the 2nd Circuit Court of Appeals having been rendered and entered November 18, 1975.

Questions Presented

The purpose and effect of the "plan of recapitalization" is to destroy the equity bearing Class B's Common shares earnings and liquidation rights, and enrich the stockholders of the Class A $5 preferred $100 limited value stocks to a value of $430 per share as an equity stock.

This "plan of recapitalization" was concocted by the Class A $5 preferred management which is Mississippi River Corporation (the same Mississippi River Fuel Corporation which in the October Term 1966, Case No. 359, Alleghany Corporation v. Mississippi River Fuel Corporation, Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit, tried to merge MoPac and the Texas and Pacific Railway, which would have handed over to the Class A $5 preferred stockholders an unrestricted 98% participation in equity, and would have eliminated the full participation in residual equity which the Commission granted to the Class B stock and leave its equity participation permanently frozen at 2%. Fortunately, the United States Supreme Court heard the case and decided in favor of Class B. This "plan" of recapitalization transfers over $615 million from the Class B's values to the Class A $5 preferred, and thus shrinks the Class B equity bearing common value from $894 million to about $279 million, all at the expense of Class B, without any right given to appellant by the U. S. District Court in Foley Square (1967, CIV. 5059 (E.W.)) to allow me, a Class B dissenter, who voted all of his Class B shares against the MoPac "plan of recapitalization" at the Special Stockholders Meeting, held on June 15, 1973, the District Court below not giving me the right to have my Class B shares evaluated under due process of law to find their true values according to my rights secured to me by the Constitution and laws of the United States, the Hon. Court stating to me the following: "But I am giving notice to you now, and notice to any other applicant, that a similar application will be denied because there is no substance to it, and will be denied with the imposition of substantial costs." 3/19/75

Petitioners Motion is Hereby Denied. So Ordered EDWARD WEINFELD, U.S.D.J. FILED MAR. 21, 1975.

I had asked the Honorable U. S. District Court a due process of law evaluation of my Class B shares according to the I.C.C. MoPac "agreed system plan" of 1954-1955, 290 I.C.C. 477, law, which gives the fully compensated Class A $5 preferred stocks a $100 per share value, and the Class B equity bearing Common stocks "only a small amount in actual par value, but to make it the residuary beneficiary of any future prosperity the property may enjoy." The Class B became the equity bearer, which at December 31, 1972 had $349,192,000 Retained Income, and $545 million consolidated nondepreciable properties (including land and land rights or mineral rights in coal, oil, gas, etc., on over 5 million acres of lands, properties stated at estimated original cost, primarily determined as of January 1, 1955, by the I.C.C. valuations. These properties are worth many times more than that on account of the fuel crises and monetary inflation) or a total of [illegible]r $894 million, or over $22,500 value per Class B for its 39,731 shares of Class B, rather than the $2,450 value allocated for each of my Class B as "fair value" by the U. S. District Court in the "plan of recapitalization." That Hon. U. S. D. Court does not give me the right for a due process of law evaluation—it calls my request as "frivolous." But as a Class B stockholder dissenter who voted against this so called "plan of recapitalization," I have a constitutional right to due process of law evaluation of my Class B shares. I want a due process of law evaluation of my Class B.

It is undisputed that such a "plan of recapitalization" would destroy my Class B common stock equity position

and earnings and it hands over to the Class A $5 preferred stock 74½% of the MoPac equity from Class A's former 17½% equity, and it reduces the value of my Class B from 82½% to 25½%, or from a value of over $22,500 per Class B to $2,450 value per Class B, or from a value for Class B of $894 million for its 39,731 shares before the "plan of recapitalization" to $279 million value after the "plan of recapitalization." Class A's equity position is increased from about $186 million to about $801 million, with the $615 million value transferred from the equity bearing Class B to the Class A $5 preferred, and from a fixed $100 equity value per Class A to about $430 nonfixed value per Class A. These values are as of December 31, 1972. The Class B stockholders voted in favor of this "plan of recapitalization" at the special meeting of stockholders held in Saint Louis June 15, 1973. I am a dissenter, I voted all my Class B at the special meeting in Saint Louis *against* the "plan of recapitalization." I want my Class B shares evaluated under due process of law according to the "agreed system plan" that was decided by the I.C.C. on July 29, 1954, approved and certified to the United States District Court, Eastern Division, Eastern Judicial District of Missouri which in turn was approved and certified by the U.S. District Court to the I.C.C. on February 25, 1955, making the "agreed system plan" 290 I.C.C. 477 a law of the United States. I am praying to this Honorable United States Supreme Court to have my Class B equity bearing Common shares evaluated under due process of law because I am a dissenter and I do not want to be deprived of the values of my Class B shares, according to the Constitution and laws of the United States. For this reason, petitioner James C. Gabriel, Pro Se, presents the following questions:

1. Even though the U.S. Federal District Court (S.D. N.Y. 67 Civ. 5095 (EW)) had taken jurisdiction of a class action for better dividends and conspiracy, jurisdiction being based solely on diversity, it ordered the settlement for this case for better dividends into a "plan of recapitalization" of MoPac under Section 20a through the Federal District Court judgment and opinion. What right has the Federal District Court got to force me to accept the "plan of recapitalization" to give me a value of $2,450 for each of my Class B shares when I already had voted all of my Class B shares against this "plan of recapitalization" at the special meeting of MoPac stockholders that was held on June 15, 1973, in Staint Louis. As a Class B dissenter don't I have a right under the Constitution and laws of the United States for a due process of law evaluation of my Class B MoPac Common stocks which have a value close to $22,500 per share?

2. Am I obliged to accept this so-called "plan of recapitalization" under section 20a of the Interstate Commerce Act, like the majority of the Class B stockholders did, even though I had voted against the "plan," and I am a dissenter Class B stockholder who had asked the U.S.D.C. for a due process of law evaluation of my stocks as a Constitutional right?

3. Isn't it against the Fifth Amendment and Article I, sections 9 and 10 of the Constitution of the United States when the U.S.D.C. S.D. New York refuses to allow me to have my Class B shares evaluated under due process of

law when that Hon. Court is impairing the obligations of the MoPac I.C.C. contract "agreed system plan?"

Amendment V to the Constitution of the United States provides:

> "No person shall be * * * deprived of life, liberty, or property, without due process of law * * *."

Article I, section 9 provides:

> "No bill of attainder or ex post facto law shall be passed."

Article I, section 10 provides:

> "No state shall * * * pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, * * *."

4. How in justice can a Federal District Court force me to accept the value of my Class B MoPac Common stock reduced from 82½% to 25½% and have this transferred over to the defendants-appellees Class A $5 preferred $100 value stock, now worth $430 per share, who never had filed a claim for it? This is against the *Wood* case. *Wood* v. *United States of America*, 132 F. Supp. 586 (S.D. N.Y. 1955). It is against the Interstate Commerce Act to take value from one stock and transfer it to another in a solvent company.

5. Why in the name of justice did the Honorable U.S.D.C. S.D. of New York on my appearance on March 19, 1975 in Room 706, at 11:00 A.M. tell me that my motion to have my Class B Common evaluated under due process of law according to the MoPac I.C.C. "agreed system plan" was frivolous

and that his Honor would deny me my motion as without merit when I had told his Honor that my Class B equity was being taken away from my stocks and transferred to Class A $5 preferred stockholders who had no right to it; that under the "plan of recapitalization" the U.S. Government was being short changed on $400 million undervaluation which the U.S. Government should have gotten at least capital gains taxes out of it; that Alleghany Corporation had a self interest to sell its Class B shares in order to remain as a motor carrier under the I.C.C. jurisdiction because Alleghany controlled the Jones Motor Company and as a motor carrier was able to save millions of dollars annually on I.R.S. penalty taxes; that the I.C.C. had jurisdiction over Alleghany's Class B stocks and the I.C.C. had pressured Alleghany to divest itself of MoPac shares; that Class B had a value of $22,500 per share after the $100 value per Class A has been set aside; that the MoPac I.C.C. plan of reorganization should be followed to the T because the property values in land and mineral rights had more than doubled and tripled in the last few years; that I am not a part of any class action case; that they have no right to rope me into this class action of MoPac to tell me that I have to accept this plan of recapitalization; that this class action case where a property owner has no permission from the U.S.D.C. to have his stocks evaluated under due process even if he is a dissenter against this "plan of recapitalization" is very bad for property owners in the U.S.A. because a class action could be started on one thing and then later changed into something else as is happening in the present MoPac case, without having the right to due process of law evaluation as a dissenter against the plan; that Alleghany Corporation paid millions in costs

for the MoPac I.C.C. system plan of Reorganization and that now this "agreed system plan" should be followed.

6. Why in the name of justice didn't the U. S. District Court S. D. N. Y. think of the Class B dissenters, and make exceptions for them to have their Class B shares evaluated under due process of law, even though the $2,450 value per Class B was so low a value that the Class A $5 preferred stockholders could not afford to let anyone escape from the trap set for them at such a cheap price?

7. Did the Court of Appeals below err in disregarding my plea for a due process of law evaluation according to the I.C.C. MoPac "agreed system plan" of 1954-1955, 290 I.C.C. 477, to find Class B's real true value; that Alleghany was under pressure by the I.C.C. to either sell their Class B shares, or else lose their I.C.C. motor carrier status, which saved Alleghany I.R.S. annual penalty taxes in millions of dollars, plus the fact that Alleghany was outside the jurisdiction of the S.E.C. Federal laws regarding stockholder protection, even though Alleghany controls Investors Diversified Services, Inc., the world's largest mutual fund complex, which controls nearly $7 billion in mutual fund assets, because the I.C.C. had deigned to call Alleghany a motor carrier, this company is exempt from regulation by the S.E.C.; that as a dissenter against the plan of recapitalization by voting all my Class B against this "plan" I had a right under the U. S. Constitution or laws of the United States to have my Class B equity bearing common stocks evaluated under due process of law according to the I.C.C. MoPac "Agreed System Plan" of 1954-1955, 290 I.C.C. 477; didn't the Court of Appeals below

err when on the 18th day of November, 1975, on an appeal from the United States District Court for the Southern District of New York, the U.S.C.A. decided: "This cause came to be heard on the transcript of record from the U. S. District Court for the Southern District of New York, and was argued by counsel, on consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed," even though Petitioner pro se has at all times consistently asked the Federal Courts that what he is asking for is to have his Class B equity bearing common stocks evaluated under due process of law according to the MoPac I.C.C. "agreed system plan" of 1954-1955 to find Class B real value by having the Federal Courts order the evaluation of Class B under due process of law, and in reply I am refused under due process of law evaluation of my Class B equity bearing common shares.

8. How could Alleghany truly represent petitioner when Alleghany's MoPac B stock was under trusteeship of the I.C.C. subject to the continuing jurisdiction of the Commission, and Alleghany was under I.C.C. order to divest itself of all of its B stock at any price in order that Alleghany may remain under jurisdiction of the I.C.C. as a motor carrier for business reasons, both of which factors were unknown to the Court and petitioner at the time the so-called settlement was approved by the District Court?

Rules Involved

Rule 23 of the Federal Rules of Civil Procedure:

"CLASS ACTIONS

(a) *Prerequisites to a Class Action.* One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

* * *

(e) *Dismissal or Compromise.* A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs. As amended Feb. 28, 1966, eff. July 1, 1966."

Constitutional Provisions

Amendment V to the Constitution of the United States provides:

"No person shall * * * be deprived of life, liberty, or property, without due process of law * * *."

Article I to the Constitution of the United States provides:

Sec. 9. "No bill of attainder or ex post facto law shall be passed."

Sec. 10. "No state shall * * * pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, * * *."

Wood v. *United States,* 132 F. Supp. 586 (S.D. N.Y. 1955)

TRANSCRIPT OF PROCEEDINGS IN THE SUPREME COURT OF THE UNITED STATES

BETTY LEVIN, *et al., Petitioners,*

v.

MISSISSIPPI RIVER FUEL CORP., *et al., Respondents.*

Nos. 352 and 359
Pages 27, 28 and 29.
WASHINGTON, D.C.
JANUARY 19, 1967

Reasons for Granting Writ

All petitioner wants is fairness and justice. He is a dissenter Class B stockholder.

Petitioner wants his Class B stockholdings in MoPac evaluated under due process for their true value.

Petitioner is a dissenter Class B MoPac stockholder who voted all of his Class B shares against the "plan of recapitalization."

The "plan of recapitalization" of MoPac calls for the arbitrary valuation of Class B, at a value of $2,450 per share as "fair value" when under due process of law the Class B has about $22,500 per share value. As a dissenter Class B shareholder, the Federal District Court did not give me the right to have my Class B evaluated under due process of law according to my constitutional rights, which is what I asked the court, to grant me that right. The Court of Appeals affirmed the order of the Southern District Court, even though I had also asked the U.S.C.A. for a due process of law evaluation according to the U. S. Constitution.

Even though the majority of Class B stockholders had voted to accept the "plan of recapitalization" under Section 20a, it is unconstitutional not to allow me as a dissenter against the "plan" who voted all his Class B against the "plan" not to have a due process of law evaluation of my Class B.

The Federal District Court (S.D.N.Y. 67 CIV. 5095) had no right to approve the "plan of recapitalization" at an arbitrary valuation of Class B at $2,450 per share when

Class B under due process of law has a valuation of about $22,500 per share, without first giving dissenters like myself the right to a due process of law evaluation for my Class B.

Petitioner is suing for himself, he does not represent a Class action for himself and others similarly situated. Therefore this case is different from previous Class action cases of other appellants.

The so called settlement or "plan of recapitalization" was far removed from the issues of the case which was for better dividends. The plan of recapitalization was a business arrangement which required petitioner and other MoPac B stockholders to accept a new unified stock of MoPac, based on an arbitrary value of their Class B equity bearing common stock, which forced their MoPac Class B equity to be reduced from 82.5% to 25.5% under the arbitrary recapitalization plan ordered by the U.S.D.C., at the same time the Class A $5 preferred equity rose from 17½% to 74.5%, which came about by the Class B values being taken over by the Class A preferred by merely calling it a "plan of recapitalization" and taking most all the values belonging to the Class B. This is clearly unconstitutional, not to be allowed to have my Class B equity bearing common stock evaluated under due process of law when I am a Class B dissenter against the "plan of recapitalization," at the same time seeing that the Class B was being denuded of most of its equity values which are being transferred to the Class A $5 preferred $100 value stock, which under the "plan of recapitalization" has reached a new value of about $430 per share and is constantly growing. These figures are as of December 31, 1972.

The court had no authority to order a recapitalization of MoPac without at the same time making it known that dissenters could have a due process of law evaluation of their Class B stocks. Recapitalization was never the issue. It was an abuse of Rule 23e of the Federal Rules of Civil Procedure. When the majority Class B accepted the "plan of recapitalization," it was the duty of the U. S. District Court S.D.N.Y. to allow dissenters like myself to a due process of law evaluation. Not to allow dissenters a due process of law evaluation is unconstitutional. It is against the 5th amendment—"No person shall be deprived of life, liberty, or property without due process of law."

It is also against Article I, section 9 and section 10.

Section 9—"No bill of attainder or ex post facto law shall be passed."

Section 10—"No state shall * * * pass any bill of attainder, ex post facto law, or law unpairing the obligation of contracts, * * *." The "agreed system plan" of MoPac by the I.C.C. 290 I.C.C. 477 is the contract. By using the "plan of recapitalization" under 20a to transfer values from Class B to the Class A $5 preferred is without a due process of law evaluation of Class B and is impairing the obligation of contracts which is the "agreed system plan" of MoPac, a contract made by the I.C.C. and the U. S. Federal District Court in Saint Louis. It is therefore unconstitutional not to allow me as a Class B dissenter against the "plan" to have a due process evaluation of my Class B.

If the case below is not corrected so as to allow due process of law evaluations of Class B dissenters to take place, no business investor will be safe. At any time a

few of a Class can start a suit on one theory, obtain authority to represent in such a suit, and then sell out on an arbitrary price for something entirely different. No one is now safe under the present ruling by the Federal Courts.

The $2,450 value per share of Class B of MoPac was never determined by due process—jury, open hearing, etc., but was picked by the Court and plaintiff appellees for purposes of recapitalization and settlement alone.

Another Reason for Granting the Petition

Alleghany Corp., a giant corporation controlling Investor's Diversified Services Corp. was the majority holder of Class B MoPac common stock, and supposedly represented petitioner. The record will show that its own self interest prevented Alleghany from acting as a representative. The MoPac B stock of Alleghany was under the continuing jurisdiction of the Commission and Alleghany was under I.C.C. order to divest itself of its MoPac stock (*cf. Jones Motor Alleghany Corporation Control and purchase Jones Motor Co., Inc.* #MC-F-10444).

Alleghany never disclosed this self interest to the District Court or to anyone else when the so called settlement of the suit was presented and approved. The only thing disclosed was that the Franklin National Bank held Alleghany's B stock in voting trust. Months after the District Court's judgment was entered it was learned that Alleghany by I.C.C. determination, had to dump its B MoPac stock at any price, which it did at great expense to petitioner, and by depriving petitioner of his right to have his own stock properly evaluated.

BLEED THROU

In the *Wood* case—*Wood* v. *United States,* 132 F. Supp. 586 (S.D.N.Y. 1955) flatly held that if one class of stockholders tried to transfer values from one stock to another stock, under the Interstate Commerce Act, it would be unconstitutional. It cannot be done in a solvent railroad. This is exactly what the Class A $5 Preferred stockholders are doing to my Class B in this so-called plan of recapitalization.

They are transferring over $20,000 value from every Class B equity bearing common to the A $5 Preferred stocks, then converting the preferred into an equity bearing common, so that the $100 preferred now has a value of $430 per share as of Dec. 31, 1972, ending up with a common stock status on top of it all.

In the Transcript of Proceedings in the Supreme Court of the United States Betty Levin *et al.,* Petitioner v. Mississippi River Fuel Corporation *et al.,* Respondents, Cases #352 and 359, Washington, D.C. January 19, 1967 on pages 28, 29, it is brought out that dissenters cannot be held in any class action. It would be unconstitutional to hold them. This dissenter minority cannot be held. This also applies to me as a dissenter against the class action or the plan of recapitalization.

Mr. Justice Harlan: Supposing that the Class B stockholders voted in favor of the merger plan, would there by anything unconstitutional about it?

Mr. Lowenthal: If they voted in favor of it by virtue of their class vote?

Mr. Justice Harlan: By virtue of their class vote.

Mr. Lowenthal: No, it would not be unconstitutional.

Mr. Justice White: Wait a minute.

Mr. Justice Stewart: What about the dissenters?

Mr. Justice White: We didn't say 100 percent.

Mr. Justice Brennan: He said the majority.

Mr. Lowenthal: I quite agree, it would be unconstitutional as to the dissenters. It could not be done. That goes too far.

If the hypothetical vote in favor of the plan is designed to deprive a minority of what they are entitled to, then the Wood case makes perfectly clear that it is unconstitutional.

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CONCLUSION

Do justice, and do not let this abuse of Rule 23(e) of the Federal Rules of Civil Procedure be used to take property rights away from citizens denying them due process of law, and the protection of their constitutionally established rights.

For class plaintiffs to start suit on one claim (and capture petitioner and others), and then deliver them up to the defendants under the pretext of settlement, to be shorn as sheep is a horrible miscarriage of justice.

This injustice is obvious by any standard. The litmus test is that petitioner and other represented Class B Mo-Pac stockholders would have been better off if their representatives had lost or dropped the dividend suit. The original suit never was intended to jeopardize, and the issues involved never jeopardized their ownership of B stock. The so-called settlement deprived petitioner of his property rights without any opportunity to have such property properly evaluated.

Review by this Court of the decision below is essential because the purpose and effect of the settlement agreement or plan of recapitalization was to destroy the Class B Common stock earnings and liquidation rights and to enrich the stockholders of Class A $5 preferred, including Mississippi River Corporation, by over $615 million values which were transferred to the Class A $5 preferred from the Class B equity bearing common without an opportunity

by me as a Class B dissenter to get a due process of law evaluation of my Class B equity bearing stocks. I ask this Hon. Court for a due process evaluation of my Class B.

Kindly grant the Writ.

Dated: Monmouth County, New Jersey
February 13, 1976

Respectfully submitted,

James C. Gabriel, Pro Se

JAMES C. GABRIEL
Petitioner Pro Se
P. O. Box 94
Sea Girt, New Jersey 08750

Certificate of Service

I, JAMES C. GABRIEL, *Pro Se,* Petitioner, do hereby certify that 3 copies each of the above and foregoing Petition for Certiorari, together with Appendix, has been deposited in the United States Mail, postage prepaid, on this the 13th day of February, 1976, to the following addressees:

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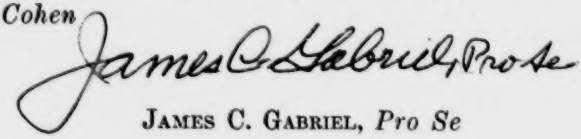

JAMES C. GABRIEL, *Pro Se*
Petitioner

APPENDIX

APPENDIX A

Judgment of the U. S. Court of Appeals

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the eighteenth day of November, one thousand nine hundred and seventy-five.

Present:

HON. IRVING R. KAUFMAN,

Chief Judge.

HON. ROBERT P. ANDERSON,
HON. ELLSWORTH VAN GRAAFEILAND,

Circuit Judges.

75-7241

BETTY LEVIN, ALLEGHANY CORPORATION and ROBERT LEVASSEUR,

Plaintiffs-Appellees,

—v.—

MISSISSIPPI RIVER CORPORATION, MISSOURI PACIFIC RAILROAD COMPANY, ROBERT H. CRAFT, T. C. DAVIS and THOMAS F. MILBANK,

Defendants-Appellees,

JAMES C. GABRIEL,

Petitioner-Appellant.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the order of said District Court be and it hereby is affirmed.

Gabriel appeals from Judge Weinfeld's order of March 21, 1975, denying a motion to set aside the final judgment of May 2, 1973 approving the settlement of this action. Each of the arguments posed by Gabriel has been previously raised and rejected in prior proceedings before the district court, this Court, the Supreme Court, or the Interstate Commerce Commission. No new evidence is presented to justify relief from the operation of the 1973 judgment. Fed. R. Civ. P. 60(b).

Although at this time we will not act pursuant to appellees' suggestion that costs be imposed upon Gabriel under F.R.A.P. 38, further appeals of this nature in a matter already so thoroughly litigated may justify the imposition of such a sanction.

Irving R. Kaufman
Robert P. Anderson
Ellsworth Van Graafeiland

APPENDIX B

Order of the U. S. District Court

3/19/75 Petitioners Motion Is Hereby Denied.

So Ordered:

Edward Weinfeld
U.S.D.J.

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No. 75-1169

Supreme Court, U. S.
FILED
MAR 16 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

JAMES C. GABRIEL,

Petitioner,

v.

BETTY LEVIN, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' MEMORANDUM IN OPPOSITION

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IN THE

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October Term, 1975

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Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' MEMORANDUM IN OPPOSITION

This memorandum is submitted by all respondents (plaintiffs and defendants below) in opposition to the petition for a writ of certiorari filed by James C. Gabriel.

The Decisions Below

This stockholders' representative and derivative action was brought by Class B stockholders of Missouri Pacific Railroad Company ("MoPac") mainly to compel the payment of greater dividends on the B stock. The United States District Court for the Southern District of New York, Weinfeld, J., approved the settlement of the action by

judgment of May 2, 1973; the Second Circuit affirmed on Judge Weinfeld's opinion; and this Court denied certiorari and rehearing. *Levin* v. *Mississippi River Corp.*, 59 F.R.D. 353 (S.D.N.Y.), *aff'd on opinion below sub nom. Wesson* v. *Mississippi River Corp.*, 486 F.2d 1398 (2d Cir.), *cert. denied sub nom. Wesson* v. *Levin*, 414 U.S. 1112 (1973), *rehearing denied*, 415 U.S. 939 (1974).

The settlement was also approved by the Interstate Commerce Commission after a full hearing in September of 1973 in which petitioner participated. *Missouri Pacific Railroad Co. Securities*, F.D. 27346, 347 ICC 377 (Div. 3, 1973). Petitions for reconsideration by the ICC were denied. The ICC decision was challenged before a three-judge court and upheld. *Gillespie* v. *U.S.* (Civ. Action No. 74-239C(2), November 14, 1974) (D.N.J.). The settlement was also approved by overwhelming majorities of both classes of MoPac's stock. It was fully consummated by January 1974.

One Michael Moumousis moved to set aside the judgment in the District Court, apparently under Rule 60(b), on November 26, 1973. That motion was denied by Judge Weinfeld on December 5, 1973. The Second Circuit affirmed the denial without opinion on December 18, 1974.

Napoleon C. Gabriel, the brother of the instant petitioner, moved to modify the judgment on March 26, 1974. That motion was similarly rejected by Judge Weinfeld on April 8, 1974 and was affirmed by the Second Circuit on December 18, 1974.

Plaintiffs' attorneys and the plaintiff Alleghany Corporation submitted an application for the allowance of attorneys' fees and costs in the District Court. After a full hearing on March 26, 1974, at which the instant peti-

tioner appeared, Judge Weinfeld rendered an opinion awarding attorneys' fees, 377 F. Supp. 926 (S.D.N.Y. 1974), and an appropriate order was entered on July 3, 1974. That order was appealed by Messrs. Moumousis, Napoleon Gabriel and other stockholders; the Second Circuit affirmed Judge Weinfeld's decision on December 18, 1974.

Messrs. Gabriel and Moumousis jointly petitioned this Court for a writ of certiorari from the denial of all of these motions; that petition was denied on April 14, 1975. *Gabriel* v. *Levin*, 421 U.S. 915 (1975). A petition for rehearing was denied on June 2, 1975. 421 U.S. 1006 (1975). A second petition for rehearing, served June 26, 1975, was refused by the Clerk of this Court for filing.

On their appeals from the judgment awarding attorneys' fees, costs were assessed against petitioners Moumousis and Gabriel. They then moved to reduce the costs by motion dated April 1, 1975. That motion was denied by the Second Circuit on or about April 22, 1975. Petitioners next moved for reconsideration of their motion to reduce costs on May 2, 1975. That too was denied on or about May 15, 1975. Petitioners moved for reconsideration *en banc* on June 2, 1975; that motion was denied on July 11, 1975.

On March 19, 1975, the instant petitioner moved to set aside the judgment in the District Court. That motion was denied on March 21, 1975. On April 11, 1975, petitioner filed a notice of appeal and his appeal was denied on November 18, 1975. Three successive motions for rehearing and related relief were denied by the Second Circuit on December 16, 1975, January 7, 1976, and February 2, 1976, respectively. The present petition seeks review of those orders.

Reasons for Denying the Petition

Petitioner has once again challenged the efficacy of the settlement of this action. As the long and detailed post-settlement history of this litigation set forth above demonstrates, petitioner has had more than ample opportunity to challenge this judgment. His claims have been repeatedly proffered and repeatedly rejected by this Court, the Court of Appeals for the Second Circuit, the District Court, and the ICC. Petitioner should not be permitted to further abuse the judicial process by wasteful, time-consuming, costly and frivolous motions, appeals, and petitions.

Petitioner raises, among a multitude of alleged wrongs, no ground for reopening the judgment which was not raised at the original settlement hearing. He advances no argument or evidence which was not or could not have been considered at the settlement hearing. He makes no argument and proffers no evidence which has not been raised in the numerous motions and appeals detailed above. The District Court was clearly within its discretion in refusing to reopen a judgment under these circumstances.

CONCLUSION

The petition for a writ of certiorari should be denied.

March 15, 1976

Respectfully submitted,

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Supreme Court, U. S.
FILED
MAR 31 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 1169

JAMES C. GABRIEL, *Pro Se* a Class B STOCKHOLDER in MISSOURI PACIFIC RAILROAD COMPANY, for himself,

Petitioner Pro Se,

—v.—

BETTY LEVIN, on behalf of herself and all other holders of CLASS B COMMON STOCK of MISSOURI PACIFIC RAILROAD COMPANY, and on behalf of said corporation, and ROBERT LE VASSEUR and ALLEGHANY CORPORATION,

Plaintiffs-Appellees-Respondents,

—against—

MISSISSIPPI RIVER CORPORATION, MISSOURI PACIFIC RAILROAD COMPANY, ROBERT H. CRAFT, T. C. DAVIS and THOMAS MILBANK,

Defendants-Appellees-Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY TO RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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INDEX

PAGE

Petitioner's Critical Reply to Respondents' Memorandum in Opposition to My Petition for a Writ of Certiorari Filed by Petitioner 2

Petitioner's Direct Reply to Respondents' Memorandum in Opposition 9

The Decisions Below 9

REASONS FOR GRANTING THE WRIT

My Answer to Their Reasons for Denying Petition 15

Conclusion 17

Certificate of Service 18

TABLE OF AUTHORITIES

Cases:

Levin v. Mississippi River Corp., 59 F.R.D. 353 (S.D. N.Y.) aff'd on Opinion below sub nom. Wesson v. Mississippi River Corp., 486 F.2d 1938 (2d Cir.), cert. denied sub nom. Wesson v. Levin, 414 U.S. 1112 (1973) rehearing denied, 415 U.S. 939 (1974) 11

Wood v. United States, 132 F. Supp. 586 (S.D.N.Y. 1955) 3, 5, 11

PAGE

Statutes:

U.S. Constitution:

Article 1, Section 9 3
Article 1, Section 10 3

U.S.C.A. Title 18, Sections 241, 242, Chapter 13 15

Authority:

Missouri Pacific Railroad Charter or "Agreed System Plan" of 1954-1955, 290 I.C.C. 477 .....14, 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 1169

JAMES C. GABRIEL, *Pro Se* a Class B STOCKHOLDER in MISSOURI PACIFIC RAILROAD COMPANY, for himself,

Petitioner Pro Se,

—v.—

BETTY LEVIN, on behalf of herself and all other holders of CLASS B COMMON STOCK of MISSOURI PACIFIC RAILROAD COMPANY, and on behalf of said corporation, and ROBERT LE VASSEUR and ALLEGHANY CORPORATION,

Plaintiffs-Appellees,

—against—

MISSISSIPPI RIVER CORPORATION, MISSOURI PACIFIC RAILROAD COMPANY, ROBERT H. CRAFT, T. C. DAVIS and THOMAS MILBANK,

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S REPLY TO RESPONDENTS' MEMORANDUM IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner's Critical Reply to Respondents' Memorandum in Opposition to My Petition for a Writ of Certiorari Filed by Petitioner.

First and foremost, Respondents did not answer my Petition for a Writ of Certiorari for a due process of law evaluation of my shares of Class B.

Respondents' Memorandum in opposition to my Petition for a Writ of Certiorari has nothing in their answering brief that rebuts my request to the United States Supreme Court for that august body to secure and to protect my Constitutional rights by a due process of law evaluation of my MoPac Class B equity bearing Common stocks by the I.C.C., according to the I.C.C. MoPac "Agreed System Plan" of 1954-1955, or MoPac Charter, 290 I.C.C. 477, pages 492, 597-600, 624, 625 and 665, which is a law of the United States. Class B must be evaluated under the "Agreed System Plan" in order to find my Class B's real and true value because the "Agreed System Plan" was approved by the Interstate Commerce Commission in 1954, which certified it to the United States District Court of original jurisdiction, Eastern Division, Eastern Judicial District of Missouri in Saint Louis, which in turn approved it, and certified it to the I.C.C. in Washington, D.C. on February 25, 1955, making the "Agreed System Plan" or MoPac Charter a law of the United States. The Interstate Commerce Commission must obey this law of the United States which the I.C.C. helped make, by evaluating my Class B equity bearing Common shares under due process of law according to MoPac's 1954-1955 Charter. This due process of law evaluation of my Class B MoPac shares is my Constitutional right.

Not to allow me a due process of law evaluation as a dissenter Class B stockholder, against the MoPac "Plan of Recapitalization," who voted all of his Class B equity bearing Common shares against this "Plan of Recapitalization" is unconstitutional. It is against the 5th Amendment —"No person shall be deprived of life, liberty or property without due process of law."

It is also against Article 1, Sections 9 and 10 of the U. S. Constitution not to allow me a due process of law evaluation.

Section 9—"No bill of attainder or ex post facto law shall be passed."

Section 10—"No State * * * shall pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, * * *." The "Agreed System Plan" of MoPac by the I.C.C. and the U. S. District Court in Saint Louis—290 I.C.C. 477, is a contract, and my Class B equity bearing Common shares must be evaluated under that contract, under due process of law to find their true real value. To transfer the values from my Class B equity shares to the Class A $5 preferred $100 value shares without a due process of law evaluation of my B shares first, to find the real true values of my Class B, and thus deprive me, a minority B dissenter stockholder, of what values I am entitled to, goes too far. It is clearly unconstitutional.

In addition, according to the *Wood* case—*Wood* v. *United States,* 132 F.Supp. 586 (S.D.N.Y. 1955) in which historical case Honorable Edward Weinfeld concurred in 1955, it was flatly held that if one class of stockholders tries to transfer values from one Class of railroad stock to another Class of railroad stock under the Interstate Commerce Act, in a solvent railroad company, it is unconstitu-

tional. This is what Defendants-Appellees Class A $5 preferred $100 value stockholders are doing to my Class B equity bearing Common shares, using the "Plan of Recapitalization" as an excuse to transfer a value of over $20,000 from each Class B to the Class A $5 preferred shares $100 value stocks, now, as of December 31, 1972, making each $100 Class A now have a value of $430 per share and each Class B reduced in value to $2,450 from $22,500 per Class B. Class B is being reduced from an overall value of 82½% equity ownership of the MoPac Company to a mere 25½%, by transferring that value to the Defendants-Appellees Class A by raising the Class A preferred from 17½% of the MoPac Company equity value to 74½%, or a gain of 57 percentage points, or a gain of over $615 million values gotten from Class B, and transferred to Class A $5 Preferred stocks, mostly going to Mississippi River Corporation which owns 62% of the preferred, as of 12/31/72.

Unless this Honorable United States Supreme Court grants me relief by due process of law evaluation of my Class B MoPac equity bearing Common shares, my Class B property will be taken away from me, and over 57 percentage points or over $20,000 in value from each of my Class B shares will be transferred to the Class A $5 preferred, and to the 62 percent of Class A $5 preferred being owned by Mississippi River Corp., which controls the Missouri Pacific Railroad Board of Directors. Mississippi River Corp. is the architect of this so called "Plan of Recapitalization," which benefits the Class A $5 preferred over $615 millions, this $615 million values made up of Retained Income and Property values as of 12/31/72.

Petitioner *Pro Se* is suing for himself to have his Class B equity shares evaluated under due process of law which

is his constitutional right. This is not a class action case. My claim to due process of law evaluation has been rejected by Honorable Edward Weinfeld, U. S. District Judge, S.D.N.Y., 65 Civ. 5095 (EW), even though Petitioner told his Honor that Class B has a value of over $22,500 per share as of 12/31/72, made up of $349 million in retained income and $545 million in property values in land and land values which have more than doubled and tripled in the last few years) or a total of $894 million values, which when divided by 39,731 shares of Class B outstanding, amount to $22,500 per Class B (see pp. 5 and 6 of March 19, 1975 transcript before Hon. Weinfeld in Room 706 at 11:00 A.M.), for which Hon. Weinfeld says $2,450 per Class B is "FAIR VALUE" for each share. This means a transfer of over $20,000 from each Class B to the Class A #5 pfd. $100 value per share stocks, which after this "Recapitalization Plan" gives each a $5 pfd.—a value of over $430 per share, in addition to a Common Equity share status from its former preferred status, especially valuable in an inflationary period of our monetary economy.

According to the *Wood* case—*Wood* v. *United States,* 132 F. Supp. 586 (S.D.N.Y. 1955) in which Honorable Edward Weinfeld himself concurred, it was flatly held that that if one class of stockholders tried to transfer values from one class of railroad stocks to another class of railroad stocks under the Interstate Commerce Act in a solvent railroad company, it would be unconstitutional. There is a transfer of over $20,000 from each share of Class B Missouri Pacific Railroad shares to the Class A $5 preferred $100 value stocks in this "Plan of Recapitalization" which, according to the *Wood* case, is unconstitutional.

I had asked Hon Weinfeld to have my Class B evaluated under due process of law according to the MoPac "Agreed System Plan" of 1954, or Charter, and his Honor denied me this as "frivolous." But here is a transfer of over $20,000 per Class B to Class A $5 Preferred, which is against the *Wood* case, and Hon. Weinfeld says my request for a due process of law evaluation is "frivolous." Hon. Weinfeld's reply was as follows (see p. 11 of March 19, 1975 Transcript) (67 Civ. 5095 (EW)): "I am going to deny the request made by the defendant (Alleghany Corporation, represented by Donovan Leisure), which I regard as a proper one, that costs be imposed because you are appearing for the first time pro se. But I am giving notice to you now, and notice to any other applicant that a similar application will be denied because there is no substance to it, and will be denied with the imposition of substantial costs."

I am interested in getting my Class B evaluated under due process of law, according to the MoPac Charter of 1954-1955, made by the I.C.C. and the U. S. District Court of Saint Louis, to find my Class B real and true value so that I get for my Class B the value that I am entitled to as a minority Class B dissenter against the "Plan of Recapitalization" by the I.C.C., MoPac and Mississippi River Corporation. I bring this request before Hon. Weinfeld's Court, and he calls my request for due process evaluation as "frivolous." I am being threatened and intimidated that "costs be imposed" unless I drop the case, even though I am asking for my constitutional rights, due process evaluation.

I am being threatened and intimidated for my wanting to exercise my constitutional rights, my civil rights for my own property. These rights and privileges are secured to me by the Constitution or laws of the United States and those who threaten or intimidate me in the free exercise or enjoyment of any right or privilege secured to me by the Constitution or laws of the United States are liable under the Civil Rights Act.

Respondents should not oppose petitioner to have a due process evaluation of his Class B property. His motions, appeals and petitions are not frivolous, but are worthy. Petitioner has a constitutional right to have his Class B lawfully evaluated.

The District Court erred in not allowing Petitioner to have his Class B shares evaluated under due process of law, so that Petitioner, a Class B dissenter, would not be deprived of the values his MoPac Class B was entitled to under the United States Constitution.

Kindly grant me the Writ so that giant corporations will not henceforth in similar cases be permitted to deprive individual property owners like myself of their property rights secured to all by the Constitution of the United States.

This case is very worthy of this Honorable Court's consideration because it involves fundamental issues of the property rights of individuals regarding private ownership of property to be henceforth safeguarded from the grasping hands of giant corporate structures, like Mississippi River Corporation in this instant case, whose aim is to take away from small minority stockholders their very

valuable stocks at a fraction of their real true value, not by buying them in the open competitive market place, but by the clever use of lawyers to overcome the Government agencies and the Federal Courts, using them as vehicles to force rightful owners to make them give up their valuable holdings at a fraction of their real and true value, in spite of the fact that in doing so, by not having a due process of law evaluation of their Class B stocks, it is depriving them of the true and real value of their Class B stocks. This is unconstitutional.

Kindly grant me the Writ, not only for the benefit of this Petitioner *Pro Se,* who is asking this Honorable Court to have his Class B evaluated under due process of law by the I.C.C. to find its real true value, but also for the honor of our liberty and for justice for all under our constitutional form of government of limited government powers in order to secure and protect our inalienable rights or privileges, secured to all of us by the Constitution or laws of the United States, so that laws shall apply equally to all, without favoritism to some or discrimination against others, which is a projection of God our almighty Creator's Commandments.

Conclusion

For the reasons given I pray that the Writ be granted by this Honorable Supreme Court.

Petitioner's Direct Reply to Respondents' Memorandum in Opposition.

The Decisions Below

1. Petitioner James C. Gabriel, *Pre Se,* Class B equity bearing Common stockholder did not at any time appoint a representative to represent him, nor did he ever agree to a class action against MoPac to compel the payment of greater dividends on his Class B Common stocks. Petitioner is suing for himself for a due process of law evaluation of his Class B equity bearing Common shares.

2. Petitioner voted all of his Class B Common equity bearing shares against the Missouri Pacific Railroad "Plan of Recapitalization" on June 15, 1973, having gone to Saint Louis to be at the MoPac Stockholder's Special Meeting on June 15, 1973.

3. The United States District Court for the Southern District of New York, Hon. Edward Weinfeld's Court, U.S.D.J. changed the Class Action on dividends and conspiracy as Ordered by Hon. Frederick Van pelt Bryan, U.S.D.J. on October 9, 1968 (Civ. 67-5095) into a "Settlement Agreement" dated December 18, 1972, or a "Plan of Recapitalization," under Section 20a of the Interstate Commerce Act, under the same pleadings of dividends and conspiracy. Hon. Weinfeld approved the Settlement Action by his Opinion of March 19, 1973, and by his Judgment of May 2, 1973, giving each Class B a value of $2,450 per share as "FAIR VALUE," whereas Class B under due process of law evaluation according to the "Agreed System Plan" or MoPac Charter has a value of $22,500 per Class B share,

made up of $349 Million Retained Income and $545 Million property values or total of $894 Million for 39,731 Class B. This was a transfer of $615 Million to the Class A $5 preferred, which when added to $186 Million, a value equals $801 Million.

4. Petitioner William R. Wesson filed a Motion on April 5, 1973, at the U. S. District Court, Southern District of New York, in *Levin et al.,* Plaintiffs, against *Mississippi River Corp., et al.,* Defendants. Wesson, for himself and other Class B stockholders similarly situated, wanted an Order from Hon. Weinfeld to opt out of this Action—67 Civ. 5095 [EW]. On April 10, 1973, Honorable Edward Weinfeld denied Wesson's right to opt out, even though Wesson said his Class B had a value of over $19,000 per share.

5. Hon. Weinfeld allowed a transfer of over $20,000 value per Class B from Class B to Class A $5 preferred $100 value stocks by not allowing Wesson to opt out of this Class Action and have his Class B evaluated under due process of law to find its real true value. Even Hon. Weinfeld admitted in his Opinion, pages D-11, D-12 of Proxy Statement as follows: "There appears to be no dispute that should the new preferred (1,864,052) shares be converted into new Common, the equity positions of the B stockholders would be reduced from 61½% to 25½%." So that even though over $20,000 per Class B values or a total of over $615 million were being transferred from the Class B equity bearing Common shares to the Class A $5 preferred stocks, Hon. Weinfeld refused to let Wesson opt out of this Class Action to get his Class B evaluated under due process of law. Neither would Hon. Weinfeld allow present petitioner, Gabriel, due process of law.

In *Woods* v. *United States,* 132 F.Supp. 586 (S.D.N.Y. 1955) with Honorable Edward Weinfeld concurring in that case, it was flatly held that if one class of stockholders tried to transfer values from one class of railroad stocks to another class of railroad stocks under the Interstate Commerce Act in a solvent corporation, it was unconstitutional. This is what is happening in the present Missouri Pacific Railroad Case. And yet Hon. Weinfeld allowed this transfer to happen in the present case of petitioner James C. Gabriel.

The Second Circuit Court of Appeals affirmed on Judge Weinfeld's Opinion and Judgment. This Hon. U. S. Supreme Court denied certiorari and rehearing. *Levin* v. *Mississippi River Corp.,* 59 F.R.D. 353 (S.D.N.Y.), aff'd on Opinion below sub nom. *Wesson* v. *Mississippi River Corp.,* 486 F.2d 1938 (2d Cir.), cert. denied sub nom. *Wesson* v. *Levin,* 414 U.S. 1112 (1973), rehearing denied, 415 U.S. 939 (1974).

The Settlement was approved by Commission Division 3, Commissioners Tuggle, Deason and MacFarland on December 6, 1973 after a hearing in September 17 to 21, 1973 before Law Judge Gibbons who presided over the hearing, but was decided, not by the hearing Judge Gibbons, but by Commission Division 3—MoPac Securities, Finance Docket #27346. The I.C.C. decision was challenged before a three judge court in New Jersey, and the decision is still pending. Civil Action #74-469, Civil Action #74-470, and Civil Action #74-471, U. S. District Court, District of N. J.

Suing for themselves and all others similarly situated, Messrs. Napoleon C. Gabriel owner of five shares of MoPac Class B shares and Michael Moumousis owner of two

shares of Class B were assessed $1919.32 by Alleghany Corporation for costs for extra Briefs and Appendixes that Alleghany said were not up to par. They were told by attorneys for Alleghany that if they dropped their case and did not take it to the U. S. Supreme Court they would not have to pay this $1919.32 costs. But they took their case to the Supreme Court, Case #74-1171 October Term 1974, Petition for a Writ of Certiorari and also for a Petition for a Rehearing, March 17, 1975 and May 9, 1975. These were both denied. Alleghany Corporation, through Honorable Edward Weinfeld's Court, U.S.D.J., S. D. of New York, threatened both of them with contempt of Court and jail terms if $1919.32 was not paid. I have the transcript. The $1919.32 was paid and the contempt and jail threats were dropped. Do you wonder why our country is in such bad shape in all ways, with such goings on by large corporate giants who are out to get the little man who is fighting for mere survival, for justice under our constitutional form of government? But what chance has the little man except to keep on fighting for justice. The U. S. Constitution provides that laws shall apply equally to all without favoritism to some or discrimination against others. Unless the Courts follow this equality before the law according to the Constitution, this wonderful country of the U. S. A. under these goings on is in for a lot of trouble, and which may lead to a sort of spontaneous combustion reaction. Let us pray that God Our Creator may save us from such evil and that Jesus Christ help us from punishment because of these evil men and their evil doings.

On March 19, 1975 present Petitioner, James C. Gabriel, moved the U. S. District Court to evaluate my Class B equity bearing shares under due process of law to find

my Class B real and true value according to the MoPac Charter or "Agreed System Plan" of 1954-1955. My request for a due process evaluation was denied by the Hon. Weinfeld Court on March 21, 1975 as "frivolous," and "No substance to it."

On April 11, 1975 Petitioner filed a Notice of Appeal. My appeal was filed in the U. S. C. A., Foley Square, N. Y. City, N. Y. was heard on November 11, 1975. I asked for a due process of law evaluation of my Class B shares according to the "Agreed System Plan" or MoPac Charter of 1954-1955. Defendants asked the Court to put costs and sanctions on me. I protested to the Hon. Court that all I was asking for was a due process of law evaluation, my Constitutional rights, according to the "Agreed System Plan" or Charter of MoPac, 290 I.C.C. 477, according to the 5th Amendment due process of law and my Civil Rights.

On November 18, 1975 my appeal was denied by the Appeal Court as follows:

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed.

"Although at this time we will not act pursuant to Appellees' suggestion that costs be imposed upon Gabriel under F.R.A.P. 38, further appeals of this nature in a matter already so thoroughly litigated my justify the imposition of such a sanction."

I had asked the Hon. Court of Appeals to have my Class B property protected from conspirators who are trying to take it away from me at their price. I was not asking for any special price for my Class B, I was only asking that I as an individual, and not as a Class Action that went on before my case *pro se* arrived, want to have my stock properties evaluated according to the Missouri Pacific Railroad Charter or "Agreed System Plan" of 1954-1955 which was made a law of the United States of America in 1955. I had even presented to the Honorable three judge Appeals Court judges 3 certified copies of the "Agreed System Plan," 290 I.C.C. 477, from the Interstate Commerce Commission so that there could be no mistake of what I was asking for. I had also presented copies of the MoPac Charter or "Agreed System Plan" to the Appellee lawyers in the court room.

After I got through presenting my case to the Honorable Court of Appeals that I wanted my Class B evaluated according to my Constitutional rights, the Appellee lawyers asked the Honorable Court to impose costs on me, in order to shut me up from appeals of this nature—my Constitutional rights. After the Appellee lawyers had their say, I again made my pleas to this Honorable Court that I was standing up for my Constitutional rights to have my Class B stocks evaluated under due process of law according to the "Agreed System Plan" or Charter of MoPac, made in 1954-1955.

These Appellees are threatening my Civil Rights. They are conspiring to injure me by threatening costs upon me and they are intimidating me because I dare to exercise my rights or privileges secured to me by the Constitution or laws of the United States. They are conspiring against my

Civil Rights. So I asked that Honorable Court to charge these Appellees for conspiring against my Civil Rights, rights that are secured to me by the Constitution or laws of the U. S. U.S.C.A. Title 18, Sections 241, 242, Chapter 13. I made several motions and affidavits to the Second Circuit which were denied. All I am asking for is for an evaluation of my Class B Common equity B shares. I as a Class B dissenter minority Class B stockholder have a Constitutional right to a due process evaluation. I shall fight all the "Super Lawyers" there are in order to have my stocks evaluated under due process. We still live in America with a Constitution to protect our rights.

REASONS FOR GRANTING THE WRIT

My Answer to Their Reasons for Denying Petition

Petitioner is suing for himself and he is asking for an evaluation of his Class B shares under due process of law. He is a Class B stock dissenter against a "Plan of Recapitalization" that he voted against at the Special Meeting of the Missouri Pacific Railroad on June 15, 1973, at Saint Louis.

As I had stated before, all I have asked for is a due process evaluation of my Class B. If I have been rejected by the lower courts because I want a due process of law evaluation, that is the main reason why I am appealing to the United States Supreme Court for a due process evaluation of my Class B shares.

Petitioner is not abusing the judicial process with "frivolous" motions, appeals and petitions. It is Respondents who are abusing the judicial process. Petitioner is suing

for a worthy and serious cause for a due process of law evaluation of his Class B shares according to the Constitution and laws of the United States. Petitioner is trying to protect his property rights. Respondents are abusing judicial process by trying to defeat justice.

Petitioner only alleges the fact that he is seeking a due process of law evaluation for his Class B shares. This is what I have been asking for at all times.

I had asked the District Court for a due process of law evaluation of my Class B shares according to the "Agreed System Plan" of 1954-1955, 290 I.C.C. 477. This is the Missouri Pacific Railroad Charter to find Class B real and true value so as not to deprive me, a minority Class B dissenter, of what I am entitled to according to the rights secured to me by the United States Constitution.

The United States District Court should have allowed me, who is a MoPac Class B dissenter against the MoPac "Plan of Recapitalization," a due process of law evaluation of my Class B shares, and to not have decided that my request for a due process evaluation of my Class B shares according to the MoPac "Agreed System Plan" or Charter of 1954-1955, was "frivolous," and that costs should be imposed upon me, but because I am appearing for the first time *pro se,* his Honor is "going to deny the request made by the defendant" Alleghany Corporation that costs be imposed upon me. I have the Southern District Court Reporters U. S. Court House Transcript as proof of Hon. Weinfeld's decision. All I have been asking for is for my Constitutional rights—for a due process of law evaluation of my Class B shares, for Justice.

Conclusion

Please grant me the Writ.

The Petition for a Writ should be granted for all of the above stated reasons by this Honorable Supreme Court for the sake of our Constitutional form of Government for the cause of Justice, in that laws shall apply equally to all without favoritism to some or discrimination against others, which is a projection of God Our Almighty Creator's Commandments.

Respectfully submitted,

James C. Gabriel, Pro se

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Telephone 201-899-6200

Certificate of Service

I, JAMES C. GABRIEL, *Pro Se*, Petitioner, do hereby certify that 3 copies of each of the above and foregoing Petitioner's Reply to Respondents' Memorandum in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit, has been deposited in the United States Mail, postage prepaid, on this the 31st day of March, 1976, to the following addressees:

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James C. Gabriel Pro se

JAMES C. GABRIEL, *Pro Se*
Petitioner

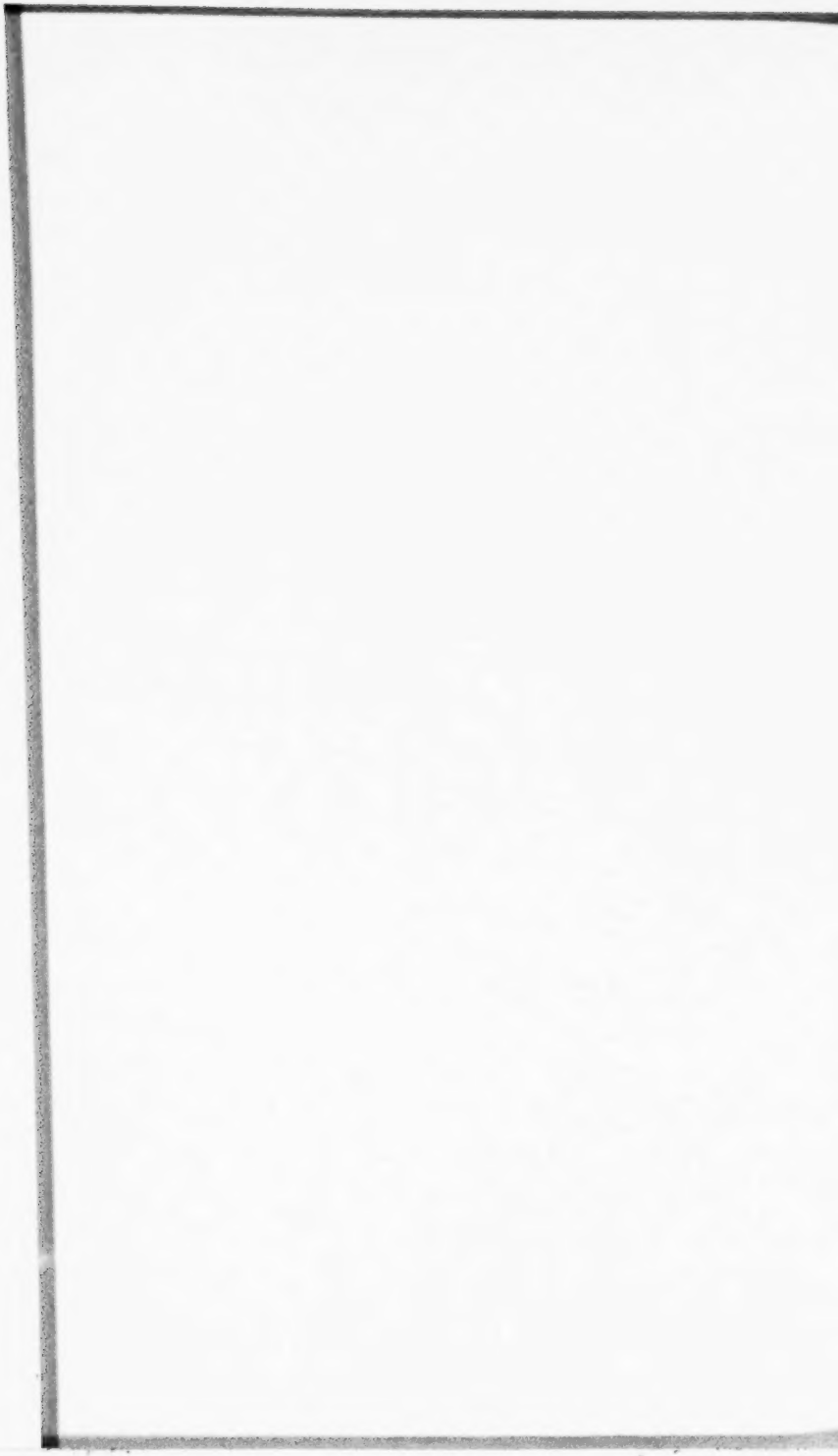

TABLE OF CONTENTS

PAGE

Factual Background 2

Tax Factors Which Warrant a Rehearing 4

Additional Tax Factors Which Warrant a Rehearing .. 12

Conclusion 15

Certificate of Petitioner, *Pro Se* 17

Certificate of Service 18

Cases:

Levin et al. v. Mississippi, et al., 59 F.R.D. 353 .....2, 8, 10

Wood v. United States of America, 132 Supp. 586 (S.D. N.Y. 1955) 12

Constitutional Provisions:

United States Constitution
Fifth Amendment 10

Article 1
Section 9 9
Section 10 9

Rule 23(e) F.R.C.P. 12

Statute:

28 U.S.C. 1332 2

Section 20a of the Interstate Commerce Act 5

PAGE

Other Authorities:

Finance Docket #9918 Missouri Pacific Railroad Reorganization Before the Interstate Commerce Commission 290 I.C.C. 477 ..... 4, 6, 7, 10, 11, 13

Alleghany Corporation, Jones Motor Company, Mc-F-10444 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 1169

JAMES C. GABRIEL, *Pro Se*, a Class B Stockholder in MISSOURI PACIFIC RAILROAD COMPANY, for himself,

Petitioner-Appellant, Pro Se,

—v.—

BETTY LEVIN, on behalf of herself and all other holders of Class B Common Stock of MISSOURI PACIFIC RAILROAD COMPANY, on behalf of said corporation, and ROBERT LE VASSEUR and ALLEGHANY CORPORATION,

Plaintiffs-Appellees,

—against—

MISSISSIPPI RIVER CORPORATION, MISSOURI PACIFIC RAILROAD COMPANY, ROBERT H. CRAFT, T. C. DAVIS and THOMAS MILBANK,

Defendants-Appellees.

PETITION FOR A REHEARING OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner-Appellant, *Pro Se*, is not a member of a class purportedly represented by Plaintiffs-Appellees. As a

Class B equity bearing common stockholder, Appellant petitions this Honorable Court, pursuant to its Rule 58(2), for a rehearing of his prior petition to this Honorable Court for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit in order that the U.S. Government Internal Revenue Service may become enabled to collect over $100,000,000 in capital gains taxes in the transfer of over $615,000,000 in retained income and property values that has paid no taxes in this huge transfer from one class of railroad stocks to another class of railroad stocks. Said prior petition having been dated February 17, 1976 and denied by this Court by an Order entered April 5, 1976.

Factual Background

The original action of *Betty Levin, et al.* v. *Mississippi River, et al.*, began in December of 1967, was made into a class action on October 9, 1968 by Order of Hon. Frederick van Pelt Bryan on dividends and conspiracy, with no intervenors permitted after December 20, 1968, was to obtain better dividends for Class B stockholders of MoPac, jurisdiction being based solely on diversity of citizenship. 28 U.S.C. 1332.

MoPack stock was of two classes: Class B, consisting of 39,731 shares, representing the equity value ownership of MoPac amounting to $894 million dollars, at $22,500 per share; and the Class A $5 preferred stock, made up of 1,864,000 shares, which are limited to $5 noncumulative dividend paid annually when and if earned and declared, plus $100 per Class A in the event of dissolution or liquidation of the new company taken out of the assets of

the company before any distribution is made to the holders of the Class B equity bearing common stock, who thereafter shall be entitled to receive any further distribution of the assets of the company without further participation by holders of Class A preferred stock. The Class A $5 preferred stock represented a value of $186 million dollars as of December 31, 1972. The total value of MoPac stocks are $186 million plus $894 million or $1,080 million.

On the 19th of March, 1973, the Federal District Court, S.D. of N.Y., approved a "Settlement" of the dividend class suit which called for a "Recapitalization" of MoPac, setting an arbitrary value for settlement purposes for the Class B stock at $2,450 value per share, without right of due process of law evaluation, so that the equity value of the Class B stock in MoPac was reduced from a high of 82.5% to 25.5%. At the same time the Class A $5 preferred stock value rose from 17.5% to 74.5% ownership of MoPac. These figures mean Class B value went from $22,500 per share to $2,450 per Class B, or from $894 million value for Class B to $279 million for Class B. Class A went from $100 value to $430 per preferred share and from a total value of $186 million for the Class A $5 preferred, to the sum of $801 million, or a gain of about $615 million without payment of any capital gains taxes to the U.S. Government I.R.S.

Alleghany Corporation owned beneficially approximately 53% of Class B MoPac common equity bearing stock or 21,243 shares, unlike Mississippi beneficially owns 1,158,395 shares or approximately 62% of the outstanding Class A $5 preferred MoPac stock.

Despite petitioner's efforts to have the Class B equity bearing common stocks of MoPac evaluated under due

process of law by Federal Court Order according to the "Agreed System Plan" of Reorganization of 1954-1955, 290 I.C.C. 477, pages 492, 624, 625 and 665, or Charter, in order to find Class B's real and true value for exchange purposes, petitioner's efforts have not succeeded to obtain such relief, even though petitioner had cited the fact that the United States Government Internal Revenue Service was being defrauded out of over $100,000,000, as of Dec. 31, 1972, in capital gains taxes in the transfer of over $615 million values from the Class B equity bearing common stocks to the Class A $5 preferred $100 value stock, which have now increased in value from $186 million to $801 when you add the $615 million and $186 million, the $5 preferred has increased in value from $100 per share to $430 per share now convertible into common. These figures are as of December 31, 1972.

Tax Factors Which Warrant a Rehearing

The tax consequences against the interests of the United States Government Internal Revenue Service are over the sum of $100,000,000 that the Internal Revenue Service is losing because the Federal courts are refusing to allow the proper higher evaluation of the MoPac Class B equity bearing common shares under due process of law according to MoPac's Charter or "Agreed System Plan" of 1954-1955, 290 I.C.C. 477, pages 492, 599, 624, 625 and 665. This Charter is the law of the United States because it was approved by the ICC in July of 1954, which certified it to the United States Federal District Court of original jurisdiction in Saint Louis Eastern Division, Eastern Judicial District of Missouri, which in turn approved it and which

certified it to the Commission on February 25, 1955. All that Petitioner James C. Gabriel wants is a due process of law evaluation of his Class B shares so that the U.S. Government I.R.S. can collect its $100 million on capital gains taxes.

As of December 31, 1972, under due process of law evaluation of 39,731 shares of Class B, gives B a value of $894 million, or $22,500 per Class B which is made up of $349 million Retained Income, and $545 million Consolidated non-depreciable properties, including land and land rights or mineral rights in gas, oil, coal, etc., properties stated at estimated original cost as of January 1, 1955 by I.C.C. evaluation, plus additions and betterments at cost, less retirements since the dates of valuation. In MoPac, these values belong to the Class B equity bearing common stock. Properties have increased many times the $545 million value since 1955.

Without a due process of law evaluation, according to the Settlement Agreement by and between Alleghany Corp., Mississippi River Corp., and MoPac, Class B equity Common gets a value of $2,450 per share or about $97 million value for all of its 39,731 shares. By participation in the Plan of Recapitalization Class B gets the equivalent of $279 million value. The Class A $5 preferred receives the difference in value between $894 million and $279 million or $615 million value made up of Class B's Retained Income and Properties, and this $615,000,000 values that have been transferred from the Class B equity bearing common stocks to the Class A $5 preferred does not pay any capital gains taxes to the United States Government I.R.S. The fact remains that according to the MoPac I.C.C.

"Agreed System Plan" or Charter of 1954-1955, 290 I.C.C. 477, Class B has a value of $894 million or $22,500 per share, and Class A $5 preferred has a value of $100 per share or $186million total fixed value. The "Settlement Agreement," dated as of December 8, 1972, is by and between Alleghany Corp., and Mississippi River Corp. who is to purchase the 53% MoPac holdings that Alleghany owns, at $2,450 per share, with MoPac participating in this transaction. But when this "Settlement Agreement" goes outside of its scope, which is between Alleghany and Mississippi, with MoPac participating, the "Recapitalization Plan" tries to rope into this "settlement" all the minority Class B stockholders including the dissenters against the "Settlement" and "Plan of Recapitalization" which uses Section 20a of the Interstate Commerce Act to put over this plan of recapitalization scheme to get Class B at a low price. Section 20a was passed by Congress in 1920 in order to protect stockholders in railroads from being defrauded by corrupt railroad management which would issue and sell to the unwary public watered railroad stocks. The Interstate Commerce Commission was supposed to act as a policeman to stop this sort of fraud against the investing public interest in railroads. The general public investors are involved here and 290 I.C.C. 477 or MoPac charter valuations should have been used to properly evaluate Class B for exchange purposes. But instead of acting as a policeman, the I.C.C. cooperated with the other side which means Mississippi River Corp., and helped to put over this scheme which helps short change and defraud Class B stockholders out of over $615 million, and the Internal Revenue Service defrauded out of over $100,000,000 in Capital gains taxes. The I.C.C. has the expertise to evaluate Class B under due process of law according to MoPac's

charter, which would give Class B its real true value of about $22,500 per share instead of the mere $2,450 value per share which $2,450 per Class B the I.C.C. says it is "Fair Value" which was for "Settlement" purposes only between Alleghany and Mississippi which helps defraud the U.S. Government I.R.S. out of over $100 million in taxes.

At the I.C.C. Hearing September 17 to 21, in Washington, D.C., Finance Docket #27386, I asked the I.C.C. to evaluate Class B under due process of law according to "Agreed System Plan" or charter, 290 I.C.C. 477, but the I.C.C. refused to do so. That is the reason why I am here in the U.S. Supreme Court, and that is the reason why the I.R.S. is on the verge of losing $100 million.

Petitioner-Appellant sincerely believes that this Honorable U.S. Supreme Court must direct that the equity bearing MoPac Common B stock be ordered to be evaluated under due process of law according to MoPac's Charter or "Agreed System Plan." Please do not forget that the lower Federal Court is converting the $5 Class A preferred $100 value stocks into equity bearing common shares, which increases this $100 value preferred stock into a value of $430 per share at the same time decreases the value of the Class B equity Common from $22,500 per share to only $2,450 per share. You cannot lawfully convert a preferred stock into an equity bearing common stock unless a due process of law evaluation has been made which is as it should be done under the Constitution of the U. S. The United States Government I.R.S. must also be accommodated to a due process of law evaluation to be able to collect the over $100,000,000 in Federal Income Capital gains taxes in the transfer of over $615 million values from the Class B equity bearing common shares, to the $5

Class A preferred $100 value stocks. Whoever heard of transferring over $615 million values without the payment of Federal Income Taxes? Whoever heard of changing a preferred into a common without due process evaluation. This is outrageous, both to the Class B shareholders and to the U.S. Government Internal Revenue Service. This Honorable U.S. Supreme Court has a very important duty to perform and it must be done now in order to remove any ideas from the minds of the American public.

Another reason why the Internal Revenue Service must collect its taxes on this MoPac case.

The "Settlement Agreement" dated as of December 18, 1972, is "by and between Alleghany Corp., MoPac, and Mississippi River Corp." It is a contract as between Alleghany and Mississippi for the sale to Mississippi of Alleghany's 53% stock holdings of 21,243 shares at a value of $2,450 per Class B. This is an agreement of sale between Alleghany and Mississippi for the sale of Alleghany's Class B shares. But they included all of the rest of the Class B minority holders even though the latter did not sign the "Settlement Agreement" and who were not a party to this agreement and who voted against it by voting against the "Plan of Recapitalization. The scope of the Agreement was further enlarged to include even those who did not even sign the "Agreement" and who voted against the "Plan of Recapitalization" and who were Class B dissenters against this "Plan of Recapitalization," proof of which is that Plaintiff William A. Wesson, 67 Civ. 5095 (E.W.) appealed to Hon. Weinfeld, U.S.D.J. on Tuesday, April 10th, 1973 to be allowed to opt out this "Settlement Agreement" or "Plan of Recapitalization" of MoPac and his Honor re-

BLEED THROUG

fused him to do so. Plaintiff Wesson wanted his Class B equity bearing shares evaluated under due process of law as it was his Constitutional right to do so, the class action having started on dividends and conspiracy pleadings, and now was changed into a "Plan of Recapitalization," "Recapitalization" never being claimed in any of the pleadings. Mississisippi River Corp. became too greedy, to entrap all of the Class B holders, even the dissenters who had a legitimate Constitutional right to dissent, so as to have their Class B equity shares evaluated under due process of law, but the $2,450 per Class B equity shares was so low that Class A $5 preferred Mississippi River Corp. could not afford to let anyone escape from the trap set for the minority Class B holders at such a cheap low price and so hired politically influential lawyers. So when at first Hon. Weinfeld said, on April 10, 1973 at the hearing for Mr. Wesson that Wesson could opt out of this plan, the attorneys for MoPac and Mississippi right there and then protested and said that if Wesson was allowed to opt out, so too would others opt out and that would not be too good for the "Plan of Recapitalization." So Hon. Weinfeld reversed himself, and Wesson was told that he could not opt out. How unconstitutional, how unjust. This Weinfeld decision also hurt the I.R.S. for over $100 million in taxes.

Therefore, the scope of the "Settlement Agreement" to entrap all Class B stockholders into the "Plan of Recapitalization" becomes an unlimited scope, no longer as it was made originally, its walls too thin to hold up against Class B stockholders' rights according to Article 1, Section 9—"No bill of attainder or ex post facto law shall be passed." Section 10—"No State shall pass any bill of attainder, ex post facto law, or law impairing the obligation

of contracts." This "Plan of Recapitalization" is impairing obligation of contract—the "Agreed System Plan * * *," or the 5th Amendment "No Person shall be deprived of life, liberty, or property, without due process of law; * * *." The Federal Courts will not allow me to have my Class B MoPac equity shares evaluated under due process, according to 290 I.C.C. 477. By being greedy, Mississippi has trapped herself because due process evaluation is now a must. Class action on dividends and conspiracy as ordered by Hon. Frederick vP. Bryan, U.S.D.J., on Oct. 9, 1968, was convoluted into a "Settlement Agreement" or "Plan of Recapitalization" on Dec. 18, 1972, which was approved on March 19, 1973 by the Federal District Court of N.Y., S.D.N.Y., at an arbitrary settlement value of $2,450 per Class B, without right of evaluation. This is not constitutional. A property owner has a right to a due process or law evaluation of his property and no Federal Court has the right to deny him this right. The U.S. Federal Courts are there to enforce the U.S. Constitution.

Therefore, a due process of law evaluation under the MoPac Charter, 290 I.C.C. 477, is called for. In this way the United States Government Internal Revenue Service will become enabled to getting its capital gains taxes that are due to it in this huge transfer of $615 million values from Class B equity bearing common shares to the Class A $5 preferred stock $100 value stock, which as of Dec. 31, 1972, had increased in value to $430 per share and attained the status of a common equity bearing stock without payment of any capital gains taxes on this grand heist.

BLEED THROUG

Another reason why MoPac Class B must be evaluated under due process to help I.R.S. collect taxes:

According to MoPac's Charter, 290 I.C.C. 477, pages 624, 625, statement made by I.C.C. Commissioner Mahaffie gives light to the present situation when he states the following regarding MoPac Class B equity common shares:

"It is proposed to award it only a small amount in actual par value, but to make it the residuary beneficiary of any future prosperity the property may enjoy. The prior Class 'A' stock is limited as to dividends and is noncumulative. It will be largely of a speculative character for some years at best. But the 'B' stock is for the present, and for the foreseeable future, principally valuable as a token for speculation." For that reason, Class B equity bearing common shares had at Dec. 31, 1972 a Retained Income of $349 million, and property values of $545 million, or a total of $894 million for its 39,731 Class B shares, or $22,500 value per Class B. We can thus readily see that MoPac's "Agreed System Plan" of Reorganization or charter calls for a due process of law evaluation. It shows that Class B is the equity owner and Class B has a value of $894 million, all belonging to Class B according to MoPac's charter, and to give Class B a value of only $2,450 per share as "fair value" by Hon. Weinfeld's Court or about $97 million for all of the shares of Class B, or a value of $279 million if all Class B shares participate in "Recapitalization Plan" is robbing Class B shareholders over $615 million, which the U. S. Government I.R.S. should collect at least a capital gains tax or over $100 million on the higher valuation under due process of law evaluation.

Hon. Weinfeld's Court has erred and was misdirected into allowing the transfer of over $615 million values from

the Class B equity MoPac shares to the Class A $5 preferred. In 1955 Hon. Weinfeld concurred in *Wood* v. *United States,* 132 F. Supp. when he decided against the transfer of values from one class of railroad stocks to another class of railroad stocks in a solvent corporation, that this was unconstitutional. Hon. Weinfeld's decision on the present MoPac case is just the opposite of his decision in the *Wood* case. This Weinfeld decision is not only costing the Class B stockholders over $615 million but it is costing the U. S. Government Federal Income taxes that should be paid on this transfer of values. I seem to be the only one who cares for the interest of the U. S. Government. What has happened?

Additional Tax Factors Which Warrant a Rehearing

Petitioner has been fleeced out of over 69 percentage points out of the value of his Class B property by means of the procedural device of a class action, Rule 23(e), FRCP, or over $20,000 per Class B for each and every Class B share Petitioner owns because a due process of law evaluation of his Class B MoPac was prohibited by the lower Courts. But I am not the only one so mistreated by Rule 23(e). The U. S. Government I.R.S. has also been defrauded, because of this Rule 23(e) F.R.C.P., out of over $100 million in Federal Income taxes because a due process of law evaluation was prohibited. Alleghany, owning Jones Motor Co., was pressured by the I.C.C. to divest themselves out of their Class B equity bearing MoPac shares in order to be allowed by the I.C.C. to remain as a motor carrier under the I.C.C. jurisdiction (see Mc-F-10444—Alleghany Corp., Jones Motor Co., p. 350), in order to save several million dollars annually in I.R.S. tax penalties, and also

in order to evade the S.E.C. Federal Securities laws as it pertains to their control of Investors Diversified Services, Inc., the largest investment Mutual Fund complex in the world, of almost $7 billion. The Federal courts have so far declined to help the embattled Class B shareholders, to help them evaluate their Class B equity hearing common stocks under due process of law. You would think that the Federal Courts were being asked for something that was taboo. If the Federal Courts prohibit and decline to allow the Class B stockholders a due process of law evaluation of their very own stocks which is their right to do so under the Federal Constitution, then to what useful service are the Federal Courts if they cannot enforce the United State Constitution? How about the rights of the U. S. Government I.R.S.? This is a very eye opening thing that is happening here. Where is justice? How about my rights secured by the Constitution of the U. S., how about my civil rights? Is this not a conspiracy against my civil rights?

How about the rights of the United States Government Internal Revenue Services for their over $100 million in capital gains taxes by a due process of law evaluation of the Class B equity bearing MoPac common shares to find their real true value according to the MoPac I.C.C. "Agreed System Plan," due process of law evaluation according to 290 I.C.C. 477, pages 492, 624, 625 and 665? Why should the Federal Courts, especially the Supreme Court of the United States, allow the transfer of over $615,000,000 values in Retained Income and properties in oil, coal, gas, etc., be transferred from the Class B equity shares to the Class A $5 pfd. and also to allow these Class A $5 pfd. to be converted into equity common shares without the payment of Federal capital gains income taxes to the Internal

Revenue Services? Does not the Constitution of the United States provide that laws shall apply equally to all without favoritism to some or discrimination against others? Why should Mississippi River Corp. be favored by not having a due process of law evaluation of Class B equity bearing common shares and Class A $5 preferred, $100 value stocks? If this due process of law evaluation takes place, it will cost Mississippi River Corp. over $62,000,000 in Federal I.R.S. taxes. The "Settlement Agreement" is no longer such, because Mississippi River Corp. got too greedy and tried to rope into this so-called "Plan of Recapitalization" all of the minority Class B stockholders and the dissenters. How about I.R.S. $100 million in taxes due it?

Conclusion

In all due respects to your Honorable Sirs whom I think very highly of because of your great responsibility and of the very great burden that you are carrying, it seems to me that it is a great pity that I am about the only one who is outspokenly standing up for the rights and interests of the United States Government Internal Revenue Service, which has over $100,000,000 in capital gains taxes coming to it in uncollected taxes due to the United States Government in the transfer of over $615,000,000 taken from the equity bearing Class B MoPac common shares and given to the Class A $5 preferred $100 value shares, without having paid any taxes on this huge transfer of over $615,000,000 values in addition to this Class A $5 preferred having become converted into an equity bearing common stock. Who ever heard of such a big give away of over $615,000,000 in Retained Income and Property values without paying taxes at least on this huge transfer to the I.R.S.?

Petitioner-Appellant, *Pro Se,* not being a member of a class purportedly represented by Plaintiffs-Appellants, petitions this Honorable Supreme Court pursuant to Rule 58(2) for a rehearing of his prior petition to this Court for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit because the reasons for a rehearing are substantial, legally interesting, and if justice is to be served this petitioner's request for a rehearing must respectfully be approved for the cause of justice that will financially benefit the United States Government many millions of dollars in Federal Capital Gains Income Taxes that will not otherwise be collected by the Internal Revenue Service.

In addition, the Court's approval of this petition for a rehearing of petitioner's prior petition to this Court for a Writ of Certiorari will command more respect for the rights of the United States Government I.R.S. in addition to helping the public's regard for our Federal Court System.

Petitioner's prayer for relief is to have this Honorable Court order that petitioner's MoPac Class B equity bearing common stocks be evaluated under due process of law according to the MoPac Charter or "Agreed System Plan," 290 I.C.C. 477, to find Class B real and true value so that the U. S. Government I.R.S. may be able to collect taxes on it. For the reasons stated above and in the original petition, please grant petitioner a Writ of Certiorari.

Dated: Monmouth County, New Jersey
April 30, 1976

Respectfully submitted,

James C. Gabriel, Pro Se

JAMES C. GABRIEL, *Pro Se*
P.O. Box 94
Sea Girt, New Jersey 08750
(201) 899-6200

Certificate of Petitioner *Pro Se*

I certify that the within Petition for Rehearing is presented in good faith and not for delay.

Dated: Monmouth County, New Jersey
April 30, 1976

James C. Gabriel Pro se

JAMES C. GABRIEL

Certificate of Service

I, JAMES C. GABRIEL, *Pro Se,* Petitioner, do hereby certify that 3 copies of each of the above and foregoing Petitioner's Petition for a Rehearing of Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit, has been deposited in the United States Mail, postage prepaid, on this the 30th day of April, 1976, to the following addressees:

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